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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,961	09/19/2003	Tsung-Yu Chen	PUSA030906	8589
23595	7590	02/22/2005	EXAMINER	
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			NGUYEN, TAM M	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/666,961

Applicant(s)

CHEN, TSUNG-YU

Examiner

Tam Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 12 and 13 is/are rejected.
- 7) ☒ Claim(s) 8-11 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hong (US 2003/0199365 A1) in view of Yu (6,022,296).

1. As to claims 1, 2, 7, 12 and 13, Hong discloses a mini stepper comprising a base (13), a shaft tube (14) secured to the base, a support member (11), two pedals (12), two hydraulic mechanisms (4) and a support rack (12) mounted on a second end of the base (see Figs. 1 and 2). Hong does not disclose that the support rack is detachably mounted to the base. Yu discloses a similar stepper device having a support rack (11) that is detachably mounted to a base (12) via a base having a fitting portion and a rack having a mounting/telescoping portion (see Fig. 1). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make Hong's support rack detachably mountable to the base via a fitting portion and mounting/telescoping portion, in light of Yu's teaching, so that the length of the base can be increased to further stabilize the stepper.

2. As to claim 3, Hong and Yu disclose a modified stepper as described above. Hong further discloses that the support rack has a second end formed with an extension.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hong (US 2003/0199365 A1) in view of Yu (6,022,296) and in further view of Hurt (5,078,390).

3. As to claims 4 and 5, Hong and Yu disclose a modified exercise device as described above (see discussion of claim 3). Hong does not disclose that the extension of the support rack extends in an oblique manner or that it is substantially V-shaped. Hurt discloses a

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stepper having a V-shaped support rack that extends in an oblique manner. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make the support rack into any of an array of shapes including a V-shape and have it extend in an oblique manner since a change in the shape of a prior art device is considered to be within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Also the prior art has disclosed supports racks that extend obliquely to provide greater support to the overall stepper.

Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hong (US 2003/0199365 A1) in view of Yu (6,022,296) and in further view of Chue (6,709,368).

4. As to claim 6, Hong and Yu disclose a modified exercise device as described above (see discussion of claim 1). Hong does not disclose that the extension of the support rack is an arcuate concave body. Chue discloses a stepper having a support rack having an extension that is an arcuate concave body (66) (see Figs. 1 & 2). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make the extension into any of an array of shapes including an arcuate concave body as long as it provides a balanced support to the stepper since a change in the shape of a prior art device is considered to be within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Allowable Subject Matter

5. Claims 8-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lin '760 discloses a stepper having a base (1) that appears to have a support rack that can be detachably mounted thereto (see Fig. 1).

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Yang '699 and Chang '140 disclose exercise devices having support racks that are substantially V-shaped.

Easley et al. '927, Lin '675, Henderson et al. '873, Szabo et al. '782, Chuang '539 and Zheng '939 are representative of the prior art, mostly steppers, having support racks of various shapes and sizes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F, 9-5.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 18, 2005



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